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7 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,
Plaintiff,
v.
BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and,
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8 foot long fishing vessel, her engines,
tackle, furniture apparel, etc., *in rem*, and
Does 1-10,
Defendants.

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No. C-07-2952-WHA
)
)
[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION IN LIMINE
NO. 1 TO EXCLUDE PAROL
EVIDENCE REGARDING AMOUNT
OF DEBT UNDER PROMISSORY
NOTE
)
Final Pretrial Conf.: May 5, 2008
Time: 2:00 p.m.
Place: Courtroom 9, 19th Floor

This matter came before the Court on Defendants' Motion In Limine No. 1 to Exclude Parol Evidence Regarding Amount of Debt Under Promissory Note (the "Motion"). The Court, having considered Defendants' Motion, any opposition filed by Plaintiff, and all pleadings and other papers on file in this action and on such other evidence and argument as received by the Court hereby orders as follows:

Defendants' Motion is hereby GRANTED. Defendants signed a Promissory Note (the "Note") securing a loan made by Plaintiff with a mortgage on Defendants' fishing vessel, the F/V Point Loma. The parties agreed that the amount of the Note would be \$215,000. Plaintiff's

1 controller prepared the Note formalizing the agreement that expressly states that the Note is for
2 \$215,000. Plaintiff contends that at the time the Note was signed, Defendants owed
3 approximately \$237,000 that should have been covered by the Note. Nevertheless, the Note is
4 the final agreement of the parties as to the amount owed under the Note at the time it was signed.
5 The express terms of the Note state that the amount covered by the Note is \$215,000 and
6 therefore, the parol evidence rule bars any extrinsic evidence contradicting the amount of the
7 Note at the time it was signed. Accordingly, any evidence proffered by Plaintiff that the amount
8 of the Note should have been more than \$215,000 at the time it was signed is inadmissible.

9 IT IS SO ORDERED.

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11 DATED: _____
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William Alsup
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT CALIFORNIA